

## DEPARTMENT OF STATE REVENUE

04-20210031.ODR

**Final Order Denying Refund: 04-20210031  
Sales & Use Tax  
For the Tax Year 2017**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

**HOLDING**

Company is not entitled to a refund requested outside of the statute of limitations.

**ISSUE**

**I. Sales Tax - Statute of Limitations.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-9-3; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014).

Taxpayer protests the denial of its refund claim.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation that acquires items for resale. Taxpayer filed a GA-110L claiming a refund for sales tax that it paid when it acquired property that it would later resell. The Department denied the claim for refund and Taxpayer protested that denial. The Department conducted a hearing and this Final Order Denying Refund results. Additional facts will be provided as necessary.

**I. Sales Tax - Statue of Limitation.**

**DISCUSSION**

Taxpayer protests the denial of its claim for refund of sales tax paid on purchases it made during 2017. Taxpayer states that it was following the Department's approved methodology. The Department issued a Memorandum of Decision in 2020 sustaining Taxpayer's protest and approving that year's filing date. In this Claim for Refund, Taxpayer claims it paid sales tax on items purchased for resale in 2017. The Claim for Refund was filed with the Department on January 29, 2021. The Department denied Taxpayer's claim because it was filed outside of the statute of limitations.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The Indiana Code provides guidance on filing a refund claim. IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

(1) The due date of the return.

(2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed.

Taxpayer believes the denial to be erroneous because it believes that the deadline for reporting and remitting 2017 sales tax was February 1, 2018, which means the requested refund was filed within the three-year statute of limitations. Taxpayer points to the Department's previous written decision for the prior year, which sustained Taxpayer on this issue given the same dates for the prior year. After reviewing the prior year's assessment and the prior written decision, the Department misunderstood the nature of the sales tax at issue in the previously issued Memorandum of Decision.

In the previous written decision, the Department made its decision based on the understanding that Taxpayer was a retail merchant claiming a refund of sales tax it had collected and remitted as an agent for the Department. However, it is now clear that Taxpayer is a consumer and not a retail merchant in this situation. Taxpayer is retail merchant when he resells the products via online forums and remits the collected taxes back to the Department. As a retail merchant and according to Department records, Taxpayer's filing date was February 1, 2021.

However, this Claim for Refund involves taxes paid *to* other retail merchants, not taxes remitted *by* Taxpayer as a retail merchant. The date of payment would therefore be the date in 2017 when Taxpayer completed its purchase with another retail merchant. That other retail merchant holds the tax payment in trust for the Department. See IC § 6-2.5-9-3(a). By operation of law, the due date of the sales tax return for sales tax paid by a consumer is December 31, 2017. IC § 6-8.1-9-1(a). Therefore, the refund claim filed on January 29, 2021, is outside of the statute of limitations. The Department was therefore correct in denying Taxpayer's refund claim.

#### **FINDING**

Taxpayer is respectfully denied.

August 16, 2021

*Posted: 11/03/2021 by Legislative Services Agency*  
An [html](#) version of this document.